

DC-22-16256

CAUSE NO. _____

JAMES DAVIS

Plaintiff

vs.

WALMART ASSOCIATES, INC.

Defendant

§ IN THE DISTRICT COURT

§

§ 134th

§

§ ____ JUDICIAL DISTRICT

§

§

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§

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§ DALLAS COUNTY TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW James Davis, Plaintiff, complaining of Walmart Associates, Inc., Defendant, and for cause of action, Plaintiff would show the Court the following:

I.

DISCOVERY CONTROL PLAN

1.1 Plaintiff intends to conduct discovery under Level 3.

II.

CLAIMS FOR RELIEF

2.1 Plaintiff seeks monetary relief over \$250,000.00 but not more than \$1,000,000.00.

III.

PARTIES

3.1 Plaintiff James Davis is an individual and resident of DeSoto, Dallas County, Texas. The last four digits of his social security number are 3859.

3.2 Defendant Walmart Associates, Inc., is a corporation duly authorized to do business in the State of Texas. Defendant may be served with process through its registered agent, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

IV.

VENUE

4.1 Venue is proper in Dallas County, Texas because this is where the incident at issue occurred.

V.

FACTS

5.1 Plaintiff was employed by Defendant as a truck driver from June 1, 2021 to October 8, 2021. While working for Defendant, Plaintiff developed soreness in his shoulder from his physical job duties. Plaintiff's doctor advised him to take a CBD, THC-Free gummy. Plaintiff took his doctor's advice and took a CBD, THC-Free gummy, while off work.

5.2 On the following Monday, Plaintiff was given a random drug test. Plaintiff's test was positive for THC. This was a false positive.

5.3 Plaintiff was informed by his supervisor that he could take a Risk Prevention Online class that would allow him to return to duty. Plaintiff paid for the class with his own money and completed the class. Plaintiff passed a drug test at the end of the class and received an email returning him to duty.

5.4 On October 8, 2021, when Plaintiff was supposed to return to duty, he was informed that he was being terminated. Defendant routinely allowed drivers under the age of 40 to return to duty after completing the Risk Prevention Online class. Plaintiff is over 40 and he was terminated.

Defendant also refused to remove the failed test from the FMCSA Drug & Alcohol Clearing House preventing Plaintiff from obtaining other jobs as a truck driver.

5.5 Plaintiff's termination was pretextual. Plaintiff was terminated due to his age.

VI.

CAUSES OF ACTION

A. Discrimination under TCHRA

6.1 Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

6.2 As described above, Plaintiff was terminated because of his age.

6.3 Defendant violated TCHRA.

6.4 Defendant's violation of TCHRA has directly and approximately caused damage to Plaintiff, for which he hereby sues Defendant.

VII.

DAMAGES

7.1 Plaintiff has suffered damages, including but not limited to back pay, front pay, past and future mental anguish, and attorney's fees. Plaintiff is also entitled to punitive damages.

7.2 By reason of the above and foregoing, Plaintiff has been damaged in a sum in excess of minimum jurisdictional limits of this Court.

VIII.

ATTORNEY'S FEES

8.1 Plaintiff has been required to engage the services of the undersigned attorney and has agreed to pay the undersigned attorney a reasonable fee for his legal services. Plaintiff is

entitled to recover attorney's fees against Defendant through the trial phase of this action, and, if necessary, through the appellate process.

IX.

CONDITIONS PRECEDENT

9.1 All conditions precedent to the bringing of the present litigation, such as the filing of a charge and a notice of right to sue letter being obtained, have occurred or have been performed. Attached as Exhibit A is the Notice of Complainant's Right to File Civil Action obtained from the Texas Workforce Commission.

X.

COURSE AND SCOPE

10.1 The actions of Defendant described within this Petition were committed by its employees and agents who in turn were acting in the course and scope of its employment.

XI.

JURY DEMAND

11.1 In accordance with Rule 216 of the Texas Rules of Civil Procedure, Plaintiff requests a jury trial and that this case be set on the Court's jury docket. In support of this Petition, Plaintiff would show that the appropriate jury fee is being paid to the clerk of the Court with the filing of this Petition.

XII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that the Defendant be cited to appear and answer and that on final trial Plaintiff has:

- a. Judgment against Defendant for damages in an amount in excess of the minimum jurisdictional limits of the Court;
- b. Prejudgment and post-judgment interest as provided by law;
- c. Costs of suit; and
- d. Such other and further relief to which Plaintiff may be entitled in law or in equity.

Respectfully submitted,

WALTERS LAW OFFICE, PLLC

/s/ Jonathan J. Walters

Jonathan J. "Jack" Walters

State Bar No. 24096307

3113 S. University Drive, #400

Fort Worth, Texas 76109

682-747-6800

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ATTORNEY FOR PLAINTIFF



James Davis
c/o Jonathan Walters
Walters Law Office, PLLC
3113 S University Drive #400
Fort Worth, TX 76109

NOTICE OF DISMISSAL AND RIGHT TO FILE CIVIL ACTION

James Davis v. Walmart Store 3432

TWCCRD Charge No.	EEOC Charge No.	TWCCRD Representative:
1A22447	31C-2022-00443	Alex E. Stewart

The Civil Rights Division has dismissed this Charge and is closing its file for the following reason:

- ☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the TWCCRD.
- ☐ Your allegations did not involve a disability that is covered by the Americans with Disabilities Act or the Texas Labor Code, Chapter 21.
- ☐ The Respondent employs less than the required number of employees or not otherwise covered by the statutes.
- ☐ We cannot investigate your charge because it was not filed within the time limits required by law.
- ☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- ☐ While reasonable efforts were made to locate you, we were not able to do so.
- ☐ You had 30 days to accept a reasonable settlement offer that afforded full relief for the harm you alleged. You failed to accept the full relief.
- ☐ The TWCCRD issues the following determination: Based upon its investigation, the TWCCRD is unable to conclude that the information obtained establishes any violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- ☒ **Other: Notice of Right to File Civil Action requested by Complainant's legal representative.**

James Davis v. Walmart Store 3432
TWCCRD Charge No: 1A22447
EEOC Charge No: 31C-2022-00443

NOTICE OF RIGHT TO FILE CIVIL ACTION

Pursuant to Sections 21.208, 21.252 and 21.254 of the Texas Labor Code, as amended, this notice is to advise you of your right to bring a private civil action in state court in the above referenced case. **PLEASE BE ADVISED THAT YOU HAVE SIXTY (60) DAYS FROM THE RECEIPT OF THIS NOTICE TO FILE THIS CIVIL ACTION.** The time limit for filing suit based on a federal claim may be different.

EEOC REVIEW NOTICE:

As your charge was dual filed under Title VII of the Civil Rights Act/Age Discrimination in Employment Act/Americans with Disabilities Act, which are enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request an EEOC review of this final decision on your case. **To secure a review, you must request it in writing within fifteen (15) days from the date of the notice.** Send your request to: San Antonio EEOC, 5410 Fredericksburg Road, Suite 200, San Antonio, TX 78229.

On behalf of the Division

Lynda Pringle for Bryan Snoddy

Bryan Snoddy
Division Director

9/27/2022

Date

cc:

Rachel Tirhi
LITTLER MENDELSON, P.C.
2301 McGee Street, 8th Floor
Kansas City, MO 64108

Certificate Of Completion

Envelope Id: FA1124643B0E4D4295746A533A507CE9
 Subject: 2022-09-27 Davis NRTFCA 31C-2022-00443.pdf
 docSeqId:
 docType:
 Source Envelope:
 Document Pages: 2
 Certificate Pages: 5
 AutoNav: Enabled
 Enveloped Stamping: Enabled
 Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Sent

Envelope Originator:
 Lynda Pringle
 101 E. 15th Street, Room 0154-B
 Austin, TX 78778
 lynda.pringle@twc.texas.gov
 IP Address: 204.65.0.21

Record Tracking

Status: Original 9/27/2022 7:41:17 PM	Holder: Lynda Pringle lynda.pringle@twc.texas.gov	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Texas Workforce Commission- Production Account	Location: DocuSign

Signer Events

Lynda Pringle for Bryan Snoddy
 lynda.pringle@twc.texas.gov
 Investigator

Texas Workforce Commission
 Security Level: Email, Account Authentication
 (None)

Signature

Lynda Pringle for Bryan Snoddy

Signature Adoption: Pre-selected Style
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In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Jack Walters
 jack@walterslawofficepllc.com
 Security Level: Email, Account Authentication
 (None)

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Using IP Address: 68.113.194.134

Sent: 9/27/2022 7:43:51 PM
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 ID: b8f91f69-10b3-4c57-8336-c1610cacef92

Rachel Tirhi
 rtirhi@littler.com

Security Level: Email, Account Authentication
 (None)

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Electronic Record and Signature Disclosure:
 Accepted: 8/22/2022 8:03:38 AM
 ID: ee3e97df-6a19-4ee9-a16c-903ad02a5e48

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Venessa Hernandez
venessa.hernandez@twc.state.tx.us
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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

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